

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Curt Flug,

Complainant,

vs.

Bob Gustafson,

Respondent.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

**To: Curt Flug, 29009 Machmeier Court, Lindstrom, MN 55045, and Bob Gustafson, 10756 Lake Avenue, Chisago City, MN 55013.**

On December 15, 2004, Curt Flug filed a Complaint with the Office of Administrative Hearings alleging that Bob Gustafson violated Minn. Stat. § 211B.06 by disseminating false campaign material. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that some of the allegations in the Complaint set forth a prima facie violation of section 211B.06. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within one week of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: December 17, 2004

/s/ Bruce H. Johnson  
BRUCE H. JOHNSON  
Administrative Law Judge

### **MEMORANDUM**

For purposes of these determinations, the facts alleged in the Complaint are assumed to be true because they are not patently false or inherently incredible.

Bob Gustafson has been a Chisago County Commissioner for more than nine years. Mr. Gustafson was re-elected to that position on November 2, 2004. The Complainant alleges that during the 2004 campaign, Mr. Gustafson prepared and disseminated campaign material that contained several false statements designed to promote his candidacy.

Minn. Stat. § 211B.06, subd. 1, provides, in part:

“A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect ... [or] promote ... a candidate for election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false.”

The Complainant contends first that Mr. Gustafson's claim that he is a “former law enforcement officer” and that he served as a “Special Officer” with the St. Paul Police Department is false. According to the Complainant, the Department of Public Safety has no record of Mr. Gustafson ever having been a law enforcement officer. The Complainant also maintains that Mr. Gustafson's statement that he was appointed to the “State Fraud Investigators Association” is false because “there are no records of any Fraud Investigators Association ever existing.” If the evidence at a hearing were to establish that Mr. Gustafson was never a law enforcement officer or a “Special Officer” with the St. Paul Police Department, and that there is no such organization as the Fraud Investigator's Association, those facts would establish a violation of Minn. Stat. § 211B.06, subd. 1. The Administrative Law Judge therefore determines that the Complaint has established a prima facie violation of Minn. Stat. § 211B.06 with respect to these allegations.

The Complainant contends next that Mr. Gustafson's claim in his campaign advertisement that he saved taxpayer money by not collecting "county per diems" and not claiming mileage for attending meetings on behalf of the county is false because he did in fact collect per diems and money for mileage directly from the organizations whose meetings he attended. And, according to the Complainant, the per diems and mileage amounts he collected are still paid for by the taxpayers even if the checks are issued directly from the organizations or committees rather than from the county. The Complainant has included copies of Mr. Gustafson's expense forms, which show that Mr. Gustafson received per diems and collected reimbursement for mileage incurred to attend meetings with the Metropolitan Radio Board and the Association of Minnesota Counties. Although Mr. Gustafson's claim that he did not collect "county per diems" and that he "did not charge the county" for miles he drove on county business may imply that he received no reimbursement at all for these expenses, his statements appear to be true, based on the documents submitted by the Complainant himself. Mr. Gustafson did not collect *from the county* per diems or mileage costs related to a number of meetings he attended.

Additionally, the clear implication of the campaign advertisement that the Complainant relies on for the second contention is that Mr. Gustafson was looking out for the taxpayers of Chisago County and not taxpayers throughout the state generally. Mr. Gustafson arguably did save money for the taxpayers of Chisago County by having some of his mileage and per diem expenses paid by organizations or governmental bodies other than Chisago County. And, contrary to the Complainant's allegation, reimbursement from non-public organizations, such as the Association of Minnesota Counties, is not payment by the taxpayers. The Administrative Law Judge therefore determines that the Complainant has failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation.

Finally, the Complainant alleges that Mr. Gustafson's statement that he is a "volunteer director of the Chisago County Recreation Program" is false. The Complainant maintains that the Chisago County Recreation Program is a private company owned by Mr. Gustafson and his wife that organizes and directs softball leagues in Chisago County. According to the complaint, Mr. Gustafson collects entrance fees from teams and submits bills on behalf of his company to the County for reimbursement. The Complainant alleges that Mr. Gustafson's campaign material indicates that he is volunteering for a county recreational program when in fact he is profiting from a private business.

There is nothing in the campaign material in question that claims that Mr. Gustafson provided recreational services for the County of Chisago, as a political subdivision of the State. But the name of the organization in question, "Chisago County Recreation Program," includes the county's name. The use of a county's name in the name of a private organization is common and familiar to the public – for example, "Hennepin County Bar Association." Whether mention of Mr. Gustafson's association with Chisago Recreation Program could be a violation of Minn. Stat. § 211B.06 is an extremely close call. But viewing the facts in the light most favorable to the Complainant, the Administrative Law Judge concludes that whether Mr. Gustafson had any control over the name of the organization and whether choice of the name of that

organization was designed to promote Mr. Gustafson's candidacy for public office are questions of fact that must be resolved. Additionally, the Complainant also alleges that Mr. Gustafson was not a volunteer, but rather received compensation for his participation in that organization. And that appears to be a more material, unresolved issue of fact. In short, the Administrative Law Judge finds that Complainant has established a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. Mr. Gustafson's statements that he is a volunteer with the Chisago County Recreation Program and that he receives no salary implies that he is involved in a completely charitable endeavor on behalf of the County. The statements go to his personal character and are designed to promote his candidacy. If the evidence at a hearing were to establish that Mr. Gustafson has made a profit from his business, it may be sufficient to establish a violation of Minn. Stat. § 211B.06, subd.1. It should be up to the panel of three Administrative Law Judges to decide this issue.

B.H.J.